

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.456 OF 2005

Kishor Motulal Khatri ..Petitioner.

Vs.

Maharashtra Housing and Area

Development Authority & Ors. ..Respondents.

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Mr.P.P.Surve for the Petitioner.

Mr.Anjad Sayeed, AGP for the State.

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CORAM : DR.D.Y.CHANDRACHUD, J.

23rd February, 2005.

P.C. :

Rule, returnable forthwith. Learned AGP for the Respondents waives service. By consent, taken up for hearing and final disposal.

The Petitioner was allotted premises comprising of Room No.3, Sardar Nagar -I, Near Building No.11, Sion Koliwada, Mumbai 400 022 on

6th September, 2000 at and for a consideration of Rs.2,09,391/-. On 29th April, 2002 a notice for eviction was given to the Petitioner to the effect that he was not in occupation of the premises. The proceedings before the competent authority took place in the absence of the Petitioner, who remained absent though he had been served. The competent authority by its order dated 21st March, 2003 directed that the Petitioner should be evicted and came to the conclusion that the Petitioner had sublet the premises unauthorizedly to one Mr.Gupta, who was using the premises as a godown for stacking of building materials. The Petitioner carried the matter in appeal and the appellate authority noted that the Rent Collector who had checked the premises had upon finding it locked, observed through the window that the premises have been used as a godown for storing construction material. The appellate authority noted that the Rent Collector had made enquiries with neighbours who had, however, not furnished any information specifically. The appellate authority has confirmed the order of the competent authority noting that when notices have been pasted on the premises, this showed that the premises have been

found locked and that they had in fact been used for storage of construction material.

There is merit in the submission of the Petitioner that both the orders passed by the competent authority as well as the appellate authority merit a fresh consideration after furnishing to the Petitioner an opportunity of being heard. The competent authority seems to proceed on the basis that the Petitioner had unauthorizedly sublet the premises and that the person to whom the premises were sublet was using them as a godown for stacking of building material. There is no evidence on the record to substantiate this charge particularly when the charge was that the premises had not been occupied when they were checked on several occasions. The appellate authority has not found that there was any case of subletting but that the premises have been utilized for storing construction material. On this state of the findings, I am of the view that the interest of justice would be served if the Petitioner is given one further opportunity of explaining his defence in response to the notice of eviction. In order to facilitate a fresh finding, the impugned

orders of the competent authority dated 21st March, 2003 and of the appellate authority dated 18th December, 2004 are quashed and set aside. The proceeding shall stand remitted back to the competent authority. The Petitioner shall appear before the competent authority for directions on 7th March, 2005. The competent authority would be at liberty to proceed in the absence of the Petitioner, if he does not appear before the competent authority. The Petitioner shall file a reply on the aforesaid date together with further material that he seeks to rely upon. The competent authority may dispose of the proceedings preferably within a period of three months from today. The Petition is accordingly disposed of.